

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-32 are now pending in this application. Claims 17 and 18 have been withdrawn from consideration.

Interview

Applicant's representative wishes to thank the Examiner for conducting the interview of May 17, 2010. The amendments to claims 1 and 22 were proposed and discussed during the interview and the Examiner indicated that the proposed amendments would overcome the rejections of record.

Rejection under 35 U.S.C. § 102

Claims 1, 13, 15, 16, and 19-28 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,681,334 to Evans *et al.* (hereafter "Evans"). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Evans discloses a device for preventing the seepage of blood from a percutaneous arterial puncture. See Evans at col. 1, lines 9-14, and col. 2, lines 3-9. The device of Evans includes a suture 24 that closes an opening 10B in an arterial wall 10C but also includes a mass 22 introduced into the percutaneous puncture tract 10A that reduces or prevents the

seepage of fluid from the puncture 10 that has been closed by the suture 24. See Evans at col. 2, lines 3-9; col. 5, lines 61-65; and col. 6, lines 9-28, 42-46. Evans discusses prior closure devices, such as a device using sutures to close an arterial opening, but notes that such devices can result in blood seepage from the puncture tract and that there is a need to reduce the seepage of blood from the blood vessel. See Evans at col. 1, line 17, to col. 2, line 9. Evans discloses that the mass 22 is made of a material that is resistant to the passage of a fluid therethrough, such as a collagen foam that enables blood to readily clot therein. See Evans at col. 6, lines 29-46.

The device 20 of Evans includes a tubular housing 26 and a tamping member 28. See Evans at col. 6, lines 29-33. Evans discloses that after an opening in an arterial wall has been sealed by at least one suture 24, the device is operated to slide the tubular housing 26 backwards relative to the tamper 28 to eject the mass 22 into the puncture tract. See Evans at col. 5, lines 61-65, and col. 7, line 46, to col. 8, line 6. After the mass 22 has been deployed from the device 20, the entire device 20 is moved as a unit to tamp the mass 22 with the tamper 28. See Evans at col. 8, lines 7-15.

In other words, the suture 24 is sewn into place and then the device of Evans is used to deploy the mass 22 to reduce or prevent seepage from the closure made by the suture 24. Thus, the suture 24 is not an inner member that is deployed inside a vessel by the device 20 of Evans, as recited in claims 1 and 22, because the suture 24 is instead formed before the device 20 of Evans is used to deploy the mass 22.

The Office argues on pages 2-3 of the Office Action that the mass 22 of Evans serves as an inner member 22 deployed by an insertion tool inside a vessel, as recited in claims 1 and 22. However, as shown in Figures 9 and 10 of Evans, the mass 22 is not inserted inside a vessel, but instead is inserted outside the vessel wall 10C and within the percutaneous puncture tract. As a result, the mass 22 is not an inner member that is deployed inside a vessel, as recited in claims 1 and 22, and Evans does not disclose all of the features recited in claims 1 and 22. Claims 13, 15, 16, 19-21, and 23-28 depend from claims 1 and 22.

Furthermore, it would not have been obvious to modify the device of Evans to deploy the mass 22 inside the vessel wall 10C because this would deploy the mass 22 within the blood stream of a patient. One of ordinary skill in the art would not have made such a modification because the mass 22 is made of a material that is resistant to the passage of a fluid therethrough, such as a collagen foam that enables blood to readily clot therein. See Evans at col. 6, lines 29-46. Therefore, one of ordinary skill in the art would have understood that deploying the mass within the vessel would be highly hazardous to a patient because of the clotting and flow-resistant properties of the mass 22.

For at least the reasons discussed above, reconsideration and withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 2-5, 12, 14, and 29-32 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Evans in view of U.S. Patent No. 5,545,178 to Kensey *et al.* (hereafter “Kensey ‘178”). This rejection is respectfully traversed. Kensey ‘178 fails to remedy the deficiencies of Evans discussed above in regard to independent claims 1 and 22, from which claims 3-5, 12, 14, and 29-32 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Evans in view of U.S. Pub. No. 2001/0003158 to Kensey *et al.* (hereafter “Kensey ‘158”). This rejection is respectfully traversed. Kensey ‘158 fails to remedy the deficiencies of Evans discussed above in regard to independent claim 1, from which claims 10 and 11 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date May 24, 2010

By Kevin McHenry

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4011
Facsimile: (202) 672-5399

Glenn Law
Attorney for Applicant
Registration No. 34,371

Kevin McHenry
Attorney for Applicant
Registration No. 62,582